

1 mean?

2 Q. I'm talking about digital asset versus
3 cryptocurrency, what is the substitute for a fiat
4 currency?

5 MR. TENREIRO: Which of those two is?

6 MR. FIGEL: Which of those two, yes.

7 A. Again, depending on the nature of the
8 asset, you know, cryptocurrency would generally
9 refer to something that is meant to be a
10 substitute. Whether it is or not, you know, that
11 sort of depends on how it's used.

12 Q. Did you have that understanding on
13 June 14th, 2018 when you delivered your speech?

14 MR. TENREIRO: What are you --

15 MR. FIGEL: The difference between
16 cryptocurrency and digital asset.

17 MR. TENREIRO: Yes or no, please.

18 A. In terms of how those terms are generally
19 used, that would be a yes.

20 Q. Now, focusing on your life prior to the
21 time you became the director of the division of
22 corporate finance, had you ever purchased any

1 cryptocurrency?

2 A. No.

3 Q. Had you ever purchased a digital asset?

4 A. No.

5 MR. TENREIRO: I'm just going to object to
6 the form. Go ahead. He answered.

7 MR. FIGEL: Give me just one second.

8 Q. And with respect to your ownership of
9 digital assets, did you own or control directly or
10 indirectly, i.e. through a fund or through a
11 third-party investment, any digital assets?

12 MR. TENREIRO: Object to form. He said he
13 has no ownership of digital assets.

14 A. Not that I'm aware of. I mean, money
15 funds today may have some digital assets that I'm
16 not aware of, but I have no specific digital asset
17 investments.

18 Q. And has that always been true, I mean,
19 pre-SEC, during SEC, and currently?

20 A. Yes. The SEC had a policy against folks
21 owning digital assets for quite some time.

22 Q. All right. Prior to the time you joined

1 the SEC, did you own any security that had been
2 issued by a cryptocurrency enterprise?

3 A. Not that I'm aware of.

4 Q. Prior to the time that you joined the SEC,
5 did you own any security issued by any digital
6 asset enterprise?

7 A. Not that I'm aware of.

8 Q. And as you sit here today, do you own any
9 securities -- by that I mean directly or
10 indirectly -- issued by a cryptocurrency
11 enterprise?

12 A. Not that I'm aware of.

13 Q. And as you sit here today, do you own any
14 security directly or indirectly issued by any
15 digital asset enterprise?

16 A. Not that I know of.

17 Q. I don't want to get into the specifics of
18 your financial arrangement with Andreessen
19 Horowitz, but I assume you do not have a
20 participatory interest in their cryptofund; is that
21 correct?

22 A. Part of my role there will entitle me over

1 time to have a piece of the fund.

2 Q. But as you sit here today, you do not?

3 A. I don't have that, no.

4 Q. I think the record is clear, but let me
5 just ask.

6 A. Sure.

7 Q. As you sit here today, you do not own
8 directly or indirectly any type of financial
9 interest in any security issued by a cryptocurrency
10 company or a digital asset; is that correct?

11 MR. TENREIRO: Object to form.

12 A. Not that I'm aware of, no.

13 MR. FIGEL: Thank you. Let's take a
14 break.

15 THE VIDEOGRAPHER: Off the record at
16 11:21.

17 (A short break was had.)

18 THE VIDEOGRAPHER: Back on the record at
19 11:37.

20 BY MR. FIGEL:

21 Q. Mr. Hinman, I just want to clarify one
22 portion of your prior testimony. We were referring

1 to I believe your Simpson Thatcher Web page.

2 A. All right.

3 Q. In which I asked you what the critical and
4 timely guidance that you provided was.

5 A. Right.

6 Q. And your testimony talked about -- I'm
7 quoting from the rough notes -- "I think the
8 division while I was there provided guidance in a
9 number of arenas" and went on.

10 Distinguishing between the division while
11 you were there and you personally, what did you
12 individually do to provide critical and timely
13 guidance on digital asset issues?

14 MR. TENREIRO: Object to form.

15 A. Okay. One of the things that we -- that I
16 did in my role as the director where you had staff
17 doing a lot of things under my direction was to
18 form FinHub. You know, Val Szczepanik was someone
19 who had a lot of experience in this area. It
20 seemed to me there was a need to coordinate across
21 the divisions. Val was a good person to do that
22 and to have a staff that would help field these

1 questions. You know, there were enough questions
2 coming in and interest in the area that we wanted
3 to dedicate some folks to that. You know, in terms
4 of things I personally did, that would be an
5 example.

6 Other examples are, you know, the
7 questions came up I think it was in early 2018 in
8 congressional testimony, you know, how is -- how
9 are you, Mr. Hinman, looking at this, and I spoke
10 about, you know, some of the issues that were
11 relevant to investor protection in the digital
12 asset space, the dangers of not having good
13 disclosures, information asymmetries I think I
14 spoke a little bit about. At the same time the
15 division and the commission I felt wanted to
16 balance investor protection and the benefits of
17 innovation.

18 So I spoke quite a bit about that in that
19 context, and, again, you know, whenever I was out
20 speaking that was something I did individually.
21 Whenever I attended a meeting generally if I were
22 in attendance I would be leading the meeting.

1 So a number of instances.

2 Q. Okay. So picking up on your testimony
3 with respect to Ms. Szczepanik --

4 A. Yes.

5 Q. -- I'd like to show you 9; is that
6 correct?

7 THE REPORTER: Yes.

8 (Hinman Exhibit 9 was marked
9 for identification.)

10 BY MR. FIGEL:

11 Q. What I'll ask the court reporter to mark
12 as Exhibit 9. It's DD in the outline. Again, I'll
13 represent to you this is a copy of a page on the
14 SEC's Website -- or available on the SEC's Website,
15 which I believe is the press release announcing
16 Ms. Szczepanik in the position that you just
17 described.

18 A. Okay.

19 Q. The date of this press release is
20 June 4th, 2018, correct?

21 A. That's right.

22 Q. And is that approximately the date on

1 which you appointed Ms. Szczepanik to be the senior
2 advisor for digital assets and innovation?

3 A. That's the date it was announced. She was
4 sort of functionally operating this way for some
5 time, but in terms of making a formal announcement
6 of it and creating the actual office, yes, June 4th
7 is about the time.

8 Q. And that office was within the division of
9 corporate finance, correct?

10 A. That's right.

11 Q. So Ms. Szczepanik reported to you?

12 A. That's right.

13 Q. And this you testified to earlier I
14 believe was one of the examples of an action that
15 you spearheaded as described in the Andreessen
16 Horowitz blog post, correct?

17 MR. TENREIRO: Object to form.

18 A. This is an action that was done under my
19 direction.

20 Q. But this would be an action that would
21 fall within the statement on Exhibit 8 that you
22 spearheaded the SEC's early work with digital

1 assets, correct?

2 MR. TENREIRO: Object to form.

3 A. You know, I guess it could. It depends a
4 little bit what you mean by early. I don't know
5 what the writer of that sentence meant by early,
6 but...

7 Q. Well, at the time that you -- I'm sorry.
8 Were you finished?

9 A. Go ahead.

10 Q. At the time that you created this position
11 I believe you just testified it was because you
12 were receiving many inquiries about the application
13 of the federal securities laws to digital asset
14 transactions, correct?

15 MR. TENREIRO: Object to form.

16 A. We formed this because we felt it was
17 useful to coordinate the inquiries across the
18 different divisions. Even though Val was in my
19 division, our division sort of took the lead on a
20 lot of the thinking in this area. So she was
21 reporting to me.

22 Q. But just so the record's clear, when you

1 say coordinate inquiries, you're referring to
2 inquiries from third parties to commission staff,
3 correct?

4 A. That's right, as well as coordinate across
5 divisions.

6 Q. Coordinate responses to the inquiries
7 across the division; is that --

8 A. Or policy across the divisions, yes.

9 Q. And fair to say that at that time you
10 understood that there was confusion and lack of
11 clarity among industry participants with respect to
12 the application of the federal securities laws to
13 digital asset transactions, correct?

14 MS. KELLY: Object to form.

15 MR. TENREIRO: I also object to form, and
16 also I'm going to instruct Mr. Hinman not to
17 answer -- to answer only to the extent he can
18 separate his understanding to the extent he gained
19 it from conversations with commission staff or
20 commissioners.

21 A. Could you repeat the question?

22 Q. Sure.

1 THE REPORTER: Do you want me to read it
2 back?

3 MR. FIGEL: No, I can see it. I'm just
4 thinking if I can rephrase it to address
5 Mr. Tenreiro's concerns.

6 Q. I'm asking for your state of mind, right?
7 I'm not asking for communications you had with any
8 other members of the staff. At the time you
9 created the position of senior advisor for digital
10 assets and innovation you understood that there was
11 confusion and lack of clarity among industry
12 participants with respect to the application of the
13 federal securities laws to digital asset
14 transactions, correct?

15 MR. TENREIRO: So, again, object to form,
16 but first of all, the foundation there was
17 confusion and lack of clarity, where is that in the
18 record, but most importantly as we discussed
19 before, you're asking him for his views. But if
20 his views were formed because staff members of the
21 commission in the deliberative process explained
22 things to him, he cannot disclose that information

1 to you. So if he has a view that he can uncouple
2 from that information or those conversations with
3 the staff and the commissioners, he can answer.

4 A. I think there was a range of
5 understandings. I think the securities bar didn't
6 have a lot of confusion or lacked clarity about
7 some of the core concepts. There may be details of
8 particular offerings. That's why we had FinHub,
9 people could come in and talk about the details of
10 what they wanted to do, but I think the securities
11 bar at this point sort of understood Howey applies.

12 Mr. TENREIRO: To be clear, Howey applies
13 or how we apply?

14 THE WITNESS: No. The case Howey, SEC
15 versus Howey, was sort of the seminole case in this
16 area and was a good set of principles. If you're
17 trying to sort this out, I think the bar at that
18 point had come to that conclusion.

19 Q. Do you know Joe Hall from Davis Polk?

20 A. I do.

21 Q. Was he a member of the securities bar that
22 you referred to?

1 A. Yes.

2 (Hinman Exhibit 10 was marked
3 for identification.)

4 BY MR. FIGEL:

5 Q. Let me show you what I'll ask the court
6 reporter to mark as Exhibit 10, which is EE in the
7 outline. Would you mind handing that to the court
8 reporter?

9 A. Hand it to the court reporter?

10 Q. Yes.

11 Mr. Hinman, I'm confident that you're
12 familiar with this document.

13 A. I am.

14 Q. I'll represent to you this is a copy of
15 your June 14th, 2018 speech that was taken off of
16 the SEC Website. You'll see at the top it's
17 entitled "Speech," and it says "Remarks at the
18 Yahoo Finance All Markets Summit: Crypto."

19 You were the author of this speech?

20 MR. TENREIRO: Object to form.

21 A. Yes.

22 Q. And you were responsible for the content

1 of this speech?

2 MR. TENREIRO: I object to form.

3 A. Yes.

4 Q. And you prepared this speech as part of
5 your duties as the director of the division of
6 corporate finance, correct?

7 A. Again, I'm not sure I had a duty to
8 provide a speech, but I did do this speech while I
9 was the director, yes.

10 Q. You prepared this speech as part of the
11 services you provided to the Securities and
12 Exchange Commission in your capacity as the
13 director of the division of corporate finance,
14 correct?

15 A. I gave this speech while I was the
16 director of the division of corporation finance.

17 Q. And you knew that this exhibit, we're now
18 talking about Exhibit 10, the document, was posted
19 on the SEC's Website, correct?

20 A. Yes.

21 Q. And you understood -- withdrawn.

22 And did you understand prior to the time

1 you delivered this speech that it would be posted
2 on the SEC's Website?

3 A. I think I did, yes. Normally we would
4 think about that in advance.

5 Q. Was it your decision to post the speech on
6 the SEC's Website?

7 A. Yes.

8 Q. And tell me what the process is by which
9 you made the judgment or the determination to post
10 the speech on the Website.

11 MR. TENREIRO: I'm going to instruct him
12 not to discuss deliberation with staff or
13 commissioners or their counsel. So you might want
14 to rephrase. I mean, the process by which he made
15 the judgment? I don't know, but go ahead.

16 A. Do you want to rephrase?

17 Q. Why don't you try to answer my question.

18 A. Could you repeat the question?

19 Q. Sure. I'll rephrase it slightly.

20 Why did you decide to post Exhibit 10 on
21 the SEC's Website?

22 MR. TENREIRO: And just, you know, the

1 same instruction, but go ahead.

2 A. Typically if I gave a speech while I was
3 the director I would have it posted just to
4 benefit, you know, the folks who wanted to see it
5 who couldn't go to the conference or hear the
6 remarks live.

7 Q. And what benefit did you think folks who
8 didn't attend the conference would obtain from
9 having access to your speech?

10 MR. TENREIRO: Same instruction,
11 Mr. Hinman.

12 A. I think they would be able to see how the
13 division under my leadership was looking at these
14 issues.

15 Q. And you didn't personally post the speech
16 on the Website, correct?

17 A. That's right.

18 Q. There was somebody in the IT department at
19 the SEC who would post it?

20 A. That's right.

21 Q. And did you review it before it was
22 posted, this version?

1 A. I don't know if I reviewed the actual
2 document that was handed over to IT, but I would
3 have looked at -- I've looked at this speech many
4 times before then and my counsel may have been the
5 folks that delivered this to IT.

6 Q. And presumably you had the opportunity to
7 review your speech prior to your testimony today?

8 A. Yes.

9 Q. Are there any statements in Exhibit 10
10 that you do not believe to be accurate as you sit
11 here today?

12 MR. TENREIRO: Without disclosing
13 deliberations with the staff that might have
14 occurred after the speech was published on the
15 Website.

16 A. I don't believe so.

17 Q. So in other words, if you were releasing
18 the speech today and you were still serving as the
19 director of the division of corporate finance,
20 would you edit this speech in any way before you
21 gave it?

22 MR. TENREIRO: Object to form.

1 A. I might. I mean, I'd have to go back and
2 read it and think about, you know, I probably could
3 have said something better or, you know, whatever,
4 added something, but I don't know if I -- I feel
5 good about this speech. I don't have any desire to
6 edit the speech.

7 Q. I'm sorry. You do feel good about the
8 speech?

9 A. I do, yes.

10 Q. And you don't as you sit here today see a
11 need to edit the speech?

12 A. No. You can always improve something if
13 you read it again, but I don't see a need to do it.

14 Q. And in the course of your -- I'm not
15 asking you about any communications you had with
16 counsel, but you testified you had the opportunity
17 to review the speech before your testimony today,
18 correct?

19 A. That's right.

20 Q. And in that review process did you see or
21 read anything in which you said I could have said
22 that better or differently?

1 A. I don't think so.

2 Q. Why did you give the speech, Mr. Hinman?

3 MR. TENREIRO: Without disclosing -- you
4 know, so let's talk about the final decision only
5 and let's keep it high level, please, without
6 disclosing the reasons you might have discussed
7 with staff of the SEC or commissioners.

8 A. Okay. I was asked to attend the summit
9 and to speak at the summit, and we agreed -- or I
10 agreed to do that. You know, why I think I gave
11 it? Because this is an area where people were
12 interested in knowing how the division was looking
13 at these issues.

14 Q. And did you have an understanding as to
15 why people were interested in how the division was
16 looking at these issues?

17 MR. TENREIRO: Do not discuss -- or
18 disclose understandings you might have derived in
19 the deliberations or conversations with staff or
20 commissioners.

21 A. Based on my own meetings up to the date of
22 this speech with outside parties it seemed like

1 this was an area they, again, were interested in
2 knowing more about how the division itself felt
3 about this area.

4 Q. And in your own mind did you think that
5 delivering this speech would answer any open issues
6 with respect to the application of the federal
7 securities laws to digital asset transactions?

8 MR. TENREIRO: So, again, even in his own
9 mind, if it's in his mind because it came from
10 conversations and discussions with staff, please
11 don't answer. Please try to uncouple what you
12 learned from, you know, your deliberations with the
13 staff to answer his question.

14 A. Okay. I'm sorry. Would you mind asking
15 me the question again?

16 Q. In your own mind did you think delivering
17 this speech would answer any open issues with
18 respect to the application of the federal
19 securities laws to digital asset transactions?

20 A. I think it would inform the marketplace of
21 how corporation -- the division of corporation
22 finance and I felt about these topics, but there's

1 a whole host of things covered here.

2 Q. Did you think this -- withdrawn.

3 Did you believe this speech provided
4 clarity to the market with respect to the
5 application of the federal securities laws to
6 digitalize the transactions?

7 MR. TENREIRO: So same instruction on
8 deliberative process and also object to form.

9 A. I think it provided clarity as to how I
10 was looking at these issues.

11 Q. And did you have an -- withdrawn.

12 Did you believe that was new information
13 to the marketplace?

14 MR. TENREIRO: Same instruction.

15 A. I think how I felt about things or the
16 framework I had in my mind was, you know, not --
17 wasn't something I had published in a speech
18 earlier.

19 Q. And what about -- what are the things or
20 the framework that you had in your mind that you
21 communicated in the speech that you had not
22 published or stated earlier?

1 A. Well, as I've mentioned before, a lot of
2 things that are in the speech have been covered in
3 earlier topics, the application of the Howey case
4 in general, our concern about information
5 asymmetries of people who were doing unregistered
6 offerings of tokens. What's more new here is a
7 framework that was meant to help people analyze,
8 okay, this is what I'm doing, am I offering a
9 security and do the securities laws apply, or at
10 least how is corp fin, the director looking at that
11 issue.

12 Q. And did you view that as guidance that you
13 were offering to the marketplace that had not been
14 made available in the past?

15 A. I think the framework was -- you know, in
16 terms of articulating specific factors was probably
17 the -- although we had referred to those things in
18 talking to market participants, I'm not sure we had
19 ever given a speech with the framework laid out the
20 way it is here.

21 Q. All right. Just a ministerial point. So
22 we have the written speech. We've entered into a

1 stipulation with respect to the video, which I'm
2 not going to play for you in the interest of
3 respecting your time.

4 Was there a substantive difference between
5 the words you spoke on the video and the published
6 remarks in Exhibit 10?

7 MR. TENREIRO: I'm just going to object.
8 I understand that you're trying to save time, but
9 he's not looked at it now. If he recalls from, you
10 know, having reviewed it. Otherwise they speak for
11 themselves and we have stipulated. So go ahead.

12 A. I'm not aware of a major substantive
13 difference. I do think the oral speech was perhaps
14 a bit shorter than the written speech and I'm
15 pretty sure I didn't read these footnotes in a
16 speech, but may have run out of time and -- may
17 have gotten to nearly all of this, but may have had
18 to cut it a little short in the oral speech.

19 Q. And in addition the video has questions
20 that you were asked by members of the audience that
21 is not reflected in the published remarks, correct?

22 A. That's right, yeah.

1 Q. To make Mr. Tenreiro's job a little easier
2 start by answering this question yes or no if you
3 can. Did you have communications with anyone other
4 than the SEC staff about the substance of your
5 remarks in the June 14th, 2018 speech before you
6 gave it?

7 A. By "SEC staff" you mean all the SEC
8 personnel?

9 Q. Uh-huh.

10 A. No, not on the substance.

11 Q. You earlier testified to the Dow report,
12 correct?

13 A. Yes.

14 (Hinman Exhibit 11 was marked
15 for identification.)

16 BY MR. FIGEL:

17 Q. I'll show you what's been marked as
18 Exhibit 11, which in the outline is FF. I'm sorry.

19 GG. Again, this will be brief.

20 A. Okay.

21 Q. I'm not asking you for any communications
22 with anybody on the staff, but did you personally

1 participate in drafting the Dow report?

2 MR. TENREIRO: Yes or no, please.

3 A. Yes.

4 Q. So fair to say that you had read and were
5 familiar with the Dow report at or about the time
6 it was issued on July 25th, 2017?

7 A. That's fair.

8 Q. And, again, start with a yes or no. Did
9 you have communications with anyone other than SEC
10 staff members about the content of the Dow report
11 before it was issued on July 25th, 2017?

12 A. No.

13 Q. All right. Remember -- excuse me. You
14 testified earlier that you and the staff of the
15 division of corporate finance met on a relatively
16 frequent basis with lawyers and representatives of
17 companies that were doing business in the digital
18 assets space, correct?

19 MR. TENREIRO: Object to form.

20 A. Yes.

21 Q. And, again, a rough estimate. Those
22 meetings occurred once or twice every week,

1 correct, during the time you were the director of
2 the division of corporate finance?

3 MR. TENREIRO: Object to form.

4 A. Yeah. I don't -- I'm not sure once or
5 twice a week or, you know, more in one week and
6 less in -- that may be overestimating a little bit,
7 but -- and it changed over time. So it's hard to
8 say.

9 Q. Do you recall being interviewed by Chris
10 Brummer at a Georgetown Law School forum in which
11 you stated in substance that you and the staff of
12 the division of corporate finance met with industry
13 participants approximately once or twice a week?

14 MR. TENREIRO: Object to form.

15 A. I don't recall that, but I do remember
16 meeting with Chris.

17 Q. My trusted aid has told me I misspoke and
18 the communication I'm talking about occurred at the
19 D.C. Fintech Week in 2018.

20 A. Okay.

21 Q. Does that refresh your recollection as to
22 whether you stated publicly that you and other

1 staff members of the division of corporate finance
2 met with industry participants about once or twice
3 a week to discuss digital asset issues?

4 A. It doesn't refresh my memory, but that
5 number sounds about right maybe at that point in
6 time.

7 MR. FIGEL: Mr. Hotseat, if you could cue
8 up tab HH to 10 minutes and 9 seconds to 10 minutes
9 and 14 seconds.

10 MR. TENREIRO: Oh, I'm sorry. Before we
11 get there, can you state on the record what we're
12 seeing since we're not going to get a printed copy
13 of this? For example, one way that we could do
14 this that has worked in the past for YouTube is
15 e-mail us the address that he's showing, and that
16 way we all can be in agreement as to what address.
17 Or you've printed it? Okay.

18 MR. FIGEL: Yep. Do you want to just hand
19 these out? We can mark it as an exhibit.

20 MR. TENREIRO: So mark it as 12 if you
21 want.

22 MR. FIGEL: So we'll mark this as

1 Exhibit 12. I don't know that you need to see it.
2 I'll read into the record this is a portion of a
3 video that is available at the YouTube address that
4 is reflected on Exhibit 12.

5 (Hinman Exhibit 12 was marked
6 for identification.)

7 A. Do you know the date there? I can't read
8 it.

9 Q. November 5th, 2018, I believe.

10 (Whereupon a discussion was had
11 off the record.)

12 MR. FIGEL: This is the problem with
13 modern litigation.

14 MR. TENREIRO: Sure.

15 Q. Do you recall whether you made remarks at
16 the D.C. Fintech Week before or after your
17 June 14th, 2018 speech?

18 A. I think it was after, but I'm not a
19 hundred percent sure.

20 Q. And I'll represent to you I believe it to
21 be, although I don't know that I can give you the
22 exact date.

1 A. Okay.

2 MR. FIGEL: So Mr. Hotseat, if you could
3 just play these five seconds.

4 (Whereupon a video was played
5 for the witness.)

6 BY MR. FIGEL:

7 Q. Any reason to think that that statement
8 was not truthful and accurate at the time you made
9 it?

10 MR. TENREIRO: Hold on a second. So,
11 Reid, I mean, we would have to see the whole video,
12 and I don't want to do that and put him through
13 this. There are other parts of that video that
14 might clarify or explain, but -- you know, without
15 understanding and in the interest of saving time
16 I'm going to let him answer, but I'm going to note
17 that objection. The speech, what he said there
18 will speak for itself.

19 A. Yeah. I think that's right at that point
20 in time. Over time the frequency may have varied.

21 Q. All right. We talked about your calendar.
22 Are you aware of any other documents at the SEC

1 that would identify when meetings occurred with
2 members of the public with respect to the
3 regulatory status of digital assets?

4 A. Other documents that would clarify when
5 meetings were held; is that what you asked?

6 Q. Uh-huh.

7 A. I would think there might be some, yes.

8 Q. Okay. What -- what would those documents
9 be?

10 A. Folks may have kept notes of meetings,
11 might be on other people's calendars, yeah.

12 Q. Was corp fin required to publish brief
13 memos reflecting meetings with third parties?

14 MR. TENREIRO: Brief memos?

15 MR. FIGEL: Brief memos, yes.

16 MR. TENREIRO: I object to form.

17 A. I don't believe so. I think there might
18 be rules around rulemakings, but not general
19 meetings.

20 (Hinman Exhibit 13 was marked
21 for identification.)

22 BY MR. FIGEL:

1 Q. I'd like to show you what I'll ask the
2 court reporter to mark as Exhibit 13. Again, this
3 is a document we pulled off of the SEC Website that
4 the lawyers in Washington recognize. Have you ever
5 seen a document in this format before, Mr. Hinman?

6 MR. TENREIRO: Just give him a moment,
7 please. Take your time reading it.

8 (Witness reviewing document.)

9 A. Okay. Yes. Have I seen a memo like this
10 before; is that the question?

11 Q. Uh-huh.

12 A. I don't think I've actually seen one from
13 investment management, but I've seen memos like
14 this.

15 Q. I'll represent to you in a very generic
16 way that many administrative agencies have
17 requirements that when staff members meet with
18 third parties there's a publication of the meeting
19 in the public record. Are you familiar generally
20 with that practice?

21 MR. TENREIRO: Object to form. Go ahead.

22 A. Sorry.

1 My understanding was that is what is done
2 when there's a rulemaking where the meeting may be
3 relevant where people are potentially commenting on
4 the rulemaking, formal rulemaking, and that seems
5 to be the case here.

6 Q. All right.

7 Now, using this as a template in the most
8 general sense, during the time that you were the
9 director of the division of corporate finance, did
10 corp fin publish memorandums reflecting meetings
11 with third parties?

12 A. Generally?

13 Q. In any circumstance.

14 A. Sure.

15 Q. In what --

16 A. I would think so. I wasn't responsible
17 for that, but I would imagine if there was a
18 rulemaking going on and there was a group that came
19 in to meet they would publish a memo.

20 Q. Other than in the context of meetings to
21 discuss rulemaking, are you aware of any practice
22 within the division of corporate finance while you

1 were the director in which meetings with third
2 parties would be memorialized?

3 A. And then published?

4 Q. And published, yes.

5 A. No.

6 Q. Okay. How about memorialized and not
7 published?

8 A. Possibly.

9 Q. And what is that document?

10 A. I think there might be memoranda just
11 recording we had a meeting with XYZ so other people
12 who weren't there would understand what was
13 covered.

14 Q. And was there a policy or practice within
15 the division of corporate finance while you were
16 the director with respect to making a written
17 record of what occurred in meetings between staff
18 of corp fin and third parties?

19 MR. TENREIRO: Let's start with a yes or
20 no for that, please.

21 A. Was there a policy in that regard?

22 Q. I didn't mean to say policy. Policy or

1 practice.

2 A. I'm not aware of a formal policy. I think
3 some people had practices of recording some outside
4 meetings just so they could share with their
5 colleagues what occurred.

6 Q. Can you tell us, again, without what's in
7 the memo or what the meeting was in what
8 circumstances those memorandums would be prepared?

9 A. Again, that's very wide ranging. I mean,
10 the staff meets with a whole slew of folks on a
11 whole slew of issues, but, again, if the meeting
12 seemed like there was content there that others
13 would benefit from, someone might write up a memo
14 or an e-mail to help explain that to others.

15 Q. All right. And if you were -- if you were
16 asked to identify where within the division of
17 corporate finance one would look to find those
18 memos, what would you say?

19 A. I don't know where the records of that
20 sort are kept. You know, with e-mail today and
21 electronic records I would think most things are on
22 a server somewhere, but I couldn't tell you exactly

1 where.

2 Q. Are you aware that a file or some digital
3 categorization or catalog in which memoranda
4 reflecting meetings with third parties would be
5 posted or stored?

6 A. I am not aware of a hierarchy there or a
7 framework to record these in a specific spot, and I
8 would think it would vary considerably. Maybe it
9 was a matter where enforcement was involved that
10 may be more formal, whereas maybe a less formal
11 meeting would be just an e-mail between folks
12 discussing what occurred.

13 Q. So what were the processes within the
14 division of corporate finance when you were the
15 director to ensure that the statements made by
16 members of your staff to various third parties
17 would be consistent with statements made by other
18 members of the staff?

19 MR. TENREIRO: Object to form.

20 A. Well, one thing I almost always had one of
21 my counsel going to the meeting so I had a sense of
22 what was being said across the division. We had --

1 I don't know if it was weekly or biweekly senior
2 staff meetings where one of the topics was
3 consistency of messaging, whether it was in our
4 reviews or no actions. I had meetings with anyone
5 who had delegated authority to provide a no action
6 letter to preclear those with me if they were new
7 or novel. You know, there were a host of things.
8 You know, the SEC has a number of internal controls
9 in order to meet its mission that it needs to be
10 consistent. So there are policies that it follows
11 so that everyone's on the same page.

12 Q. Let me -- I think I got the notes down.
13 Let's start with your testimony about you typically
14 had counsel attend those meetings?

15 A. Right.

16 Q. Which counsel?

17 A. As director I would have either two or
18 three people designated as my counsel. Do you want
19 to know their names?

20 Q. Yes, please.

21 A. It varied over time. I think when I first
22 got there it was Rolaine Bancroft, Michael Seaman,

1 and Tamara Brightwell.

2 THE REPORTER: What was the first name?

3 THE WITNESS: Rolaine Bancroft.

4 Q. Were there other individuals who served as
5 your counsel that would attend these meetings other
6 than the three people as time went on?

7 A. Yes. Rolaine rotated off and it was Lisa
8 Kohl for a good portion of my time, K-O-H-L, Lisa,
9 and for whatever reason I'm blanking on Johnny's
10 last name. I had another counsel Johnny who came
11 in toward the end.

12 Q. And did you have a practice in which you
13 asked your -- withdrawn.

14 How did you learn from your counsel what
15 was discussed at these meetings with third parties?

16 A. One addition to the last answer. Quay
17 Garrison was also counsel for a while.

18 How did I become aware of what was
19 discussed?

20 Q. Withdrawn. Let me try to make this easier
21 for you.

22 You testified that your practice was to

1 have your counsel attend the meetings with third
2 parties, and let's just talk about narrowing it to
3 meetings in which the application of the federal
4 securities laws to digital assets and digital asset
5 transactions were discussed.

6 A. Right.

7 MR. TENREIRO: Well, he didn't testify
8 about that earlier. So maybe you have to start
9 from there. He was talking generally.

10 MR. FIGEL:

11 Q. Fair enough. Was it your practice to have
12 your counsel attend meetings with third parties in
13 which there were discussions about the application
14 of the federal securities laws to digital assets
15 and digital asset transactions?

16 A. Yes.

17 Q. And how did you learn from your counsel
18 that attended these meetings that you did not
19 attend what occurred at those meetings?

20 A. I met with -- when we were physically
21 going to the office prior to COVID their office was
22 across the hall from mine, and we would meet every

1 day and discuss anything of importance, including
2 meetings that were held with outside groups.
3 During COVID we didn't have as many meetings with
4 outside groups, but there would be phone calls. I
5 had a daily call during COVID at 9:30 every day
6 with counsel and other senior officers to deal with
7 what was going on in the markets and any issues
8 that were of importance.

9 Q. Other than oral reports, were there
10 written reports that you received as to what
11 occurred at these meetings?

12 A. I think occasionally I would get an e-mail
13 or some report on what happened at the meeting.

14 Q. Other than e-mails, was there -- to your
15 recollection, were memoranda prepared in which the
16 substance of what was discussed at a meeting would
17 be -- would be memorialized?

18 A. I'm trying to remember. I think there may
19 have been some written reports for the XRP
20 meetings.

21 Q. Other than the XRP meetings?

22 A. Probably, you know, some of the meetings

1 might have been telephonic meetings where
2 discussing some of the no action letters that I've
3 talked about, and in those cases I would get a more
4 formal here's where things stand, here's the draft
5 of the no action letter memorandum talking about
6 the no action letter, things like that.

7 Q. Do you recall earlier I asked you about

8 [REDACTED]

9 A. Yes.

10 Q. And you're familiar with [REDACTED]

11 correct?

12 A. Generally.

13 Q. And you knew that [REDACTED] came and met
14 with you and other members of the staff to discuss
15 the application of the federal securities laws to
16 digital assets, correct?

17 A. Yes. They came to discuss some projects
18 that they had in mind that they wanted to do in
19 compliance with the laws, yes.

20 MR. TENREIRO: For clarity of the record,
21 this is [REDACTED]

22 THE REPORTER: Thank you.

1 MR. TENREIRO: I'm just making sure that's
2 what you're asking about.

3 MR. FIGEL: I believe it's capital C,
4 lower case, O-N-S-E-N-S-Y-S.

5 MR. TENREIRO: Me too.

6 Q. And you knew that [REDACTED] was founded by
7 [REDACTED] correct?

8 A. When I first met with him I'm not sure I
9 knew that, but eventually I think I figured that
10 out.

11 Q. When do you think you figured out that
12 Mr. [REDACTED] as a founder of [REDACTED]

13 A. Probably after having met with him maybe
14 in the first meeting, the second time. I'm not
15 even sure how many times we met with him, but
16 somewhere along the way that became clear.

17 Q. And [REDACTED] affiliated with Ether,
18 correct?

19 MR. TENREIRO: Object to form.

20 A. I don't know if they have a formal
21 affiliation. I think they -- other than [REDACTED]
22 [REDACTED] involvement, but I don't know the nature of

1 their affiliation. I know they try to help people
2 who are -- I think they are helping people who are
3 trying to develop digital assets that use the ERC20
4 protocol as part of the Ether network.

5 MR. TENREIRO: Just also, Mr. Hinman's
6 testified that he met with him. So I'm going to
7 allow this, but please just try to keep your
8 testimony to what you learned from them and not
9 from your staff in the deliberation, just to keep
10 that in mind.

11 THE WITNESS: Okay.

12 MR. FIGEL: Just for the record, I'm not
13 going to quibble with you, Mr. Tenreiro, but I
14 believe Mr. Hinman should be permitted to testify
15 about his own state of mind and his understanding
16 with respect to these questions without divulging
17 how he came to that understanding.

18 MR. TENREIRO: Okay. Well, let's -- he's
19 answering right now. So let's go on.

20 BY MR. FIGEL:

21 Q. You knew in December 2017 that [REDACTED]
22 was one of the founders of Ether, correct?

1 MR. TENREIRO: Object to form.

2 A. Again, I don't know the date that I became
3 aware of that, but somewhere along the way I became
4 aware that [REDACTED] was the founder -- frankly, I
5 didn't know for sure he was. You're saying he was,
6 that sounds right, but yeah. Okay.

7 MR. TENREIRO: Also, Reid, the founder of
8 Ether. I mean, it's confusing.

9 THE WITNESS: Did you say Ether? I
10 thought you said [REDACTED]

11 Q. No. I'm now talking about Ether.

12 A. Oh. No, I don't know that. Sorry.

13 Q. As you sit here today, are you aware of
14 Mr. [REDACTED] relationship with the Ethereum
15 Foundation as I read the description of the
16 foundation earlier in the -- in the deposition?

17 A. I don't know the specifics of his
18 relationship, no, as I sit here today.

19 Q. Were you aware in or about December 2017
20 that Mr. [REDACTED] according to press reports had a net
21 worth in excess of a billion dollars?

22 MR. TENREIRO: Object to form.

1 A. I did not know that.

2 Q. Did you know that he was a successful
3 entrepreneur in the digital asset space?

4 MR. TENREIRO: Object to form.

5 A. I did not know that, no. I didn't know
6 how successful or unsuccessful he was. He was just
7 someone that was involved with that company as far
8 as I knew.

9 Q. And you personally had communications with
10 individuals affiliated with [REDACTED] on numerous
11 occasions when you were the director of the
12 division of corporate finance, correct?

13 A. I'm not sure I would agree with numerous,
14 but I did have more than one conversation with
15 folks at [REDACTED]

16 Q. We'll go through this, but what's your
17 recollection generally as to how many meetings you
18 had with representatives of [REDACTED]

19 A. I would say probably four to five meetings
20 possibly. I'm not sure they were all meetings, but
21 maybe a phone call.

22 Q. Did Chairman Clayton ask you to

1 communicate with anyone at [REDACTED] for any
2 reason?

3 MR. TENREIRO: Sorry. Just answer yes or
4 no.

5 A. I don't recall.

6 Q. You testified to communications,
7 face-to-face meetings and telephone calls. Did you
8 have phone calls from a wireless phone or a
9 landline other than an SEC device with anyone at

10 [REDACTED]?

11 A. Not that I -- I doubt that.

12 Q. Any text communications with anyone at

13 [REDACTED]

14 A. No.

15 Q. Any other forms of communications with
16 anyone affiliated with [REDACTED] other than the
17 four or five meetings that you had just testified
18 to?

19 A. I think I may have e-mailed one of --
20 well, you're asking [REDACTED] I don't know anyone
21 at [REDACTED] that I would have had any
22 communications other than e-mail and perhaps a

1 telephonic conference call.

2 Q. All right. And directing your attention
3 now you said you had some face-to-face meetings
4 with representatives of [REDACTED]

5 A. Right.

6 Q. Did those meetings occur anywhere other
7 than the offices of the SEC?

8 A. No, I don't believe so.

9 Q. Did you have any communications with
10 Chairman Clayton about the substance of any of the
11 meetings that you -- withdrawn.

12 Did you have any communications with
13 Chairman Clayton about any of your communications
14 with anyone affiliated with [REDACTED]

15 MR. TENREIRO: Director Hinman, please
16 answer yes or no.

17 A. Yes.

18 Q. On approximately how many occasions?


19 A. Once or twice.

20 Q. I'm going to ask the question, you're
21 going to give the instruction.

22 What did you say to him and what did he

1 say to you in those communications?

2 MR. TENREIRO: All right. So I'm going to
3 instruct the witness not to answer on the basis of
4 the deliberative process privilege, possibly other
5 protections, attorney-client certainly. So please
6 don't answer that. Let's move on.

7 MR. FIGEL: Was there a policy or agency
8 determination that you discussed in your
9 communications with Chairman Clayton about the
10 meetings with 

11 MR. TENREIRO: Yes or no.

12 A. I just want to make sure I understand the
13 question. Policy or agency determination?

14 Q. Yes.

15 A. So agency policy or agency determination?

16 MR. TENREIRO: I object to form. I think
17 you're asking -- you're using a legal term that
18 he's not understanding like you're asking it, but
19 go ahead.

20 A. I don't believe so.

21 MR. FIGEL: Give me just a second. These
22 are the late breaking exhibits we had last night.

1 MR. TENREIRO: Okay.

2 MR. FIGEL: For the hotseat this would be
3 a document that you would have received this
4 morning that has -- that's marked JJ2, and I'll ask
5 the court reporter to mark this document as
6 Exhibit 14.

7 (Hinman Exhibit 14 was marked
8 for identification.)

9 BY MR. FIGEL:

10 Q. Mr. Hinman, you're not on this e-mail.

11 A. Uh-huh.

12 Q. So you're free to read it if you'd like,
13 but I'll represent to you you're not on it.

14 MR. TENREIRO: Reid, is this from last
15 night's production?

16 MR. FIGEL: Yes.

17 MR. TENREIRO: Okay.

18 MR. FIGEL: I'll explain to Mr. Tenreiro,
19 you can correlate these to the earlier ones --

20 MR. TENREIRO: The earlier ones being
21 Exhibits 1 through 3?

22 MR. FIGEL: Yes.

1 BY MR. FIGEL:

2 Q. I believe you testified earlier, but what
3 was Amy Starr's responsibility on or about
4 December 7, 2017?

5 A. At that point I don't think the FinHub had
6 been set up which she later joined. So I think she
7 was just a senior person in the division with
8 oversight of novel securities.

9 Q. Did you direct Ms. Starr to contact
10 Mr. [REDACTED] to set up a meeting with the division of
11 corporate finance?

12 A. I don't remember doing that. It's
13 possible, but I don't have a specific recollection
14 of asking her to do that.

15 Q. If you'd take a look at the Bates No. 446
16 of Exhibit 14.

17 A. 446? Yeah.

18 Q. So on December 7th Ms. Starr writes to [REDACTED]
19 [REDACTED] and [REDACTED] and talks about meeting with
20 folks from the division of corporate finance and
21 says "The meeting currently is set for next week."

22 A. Okay.